

LEONARDO M. RAPADAS  
 United States Attorney  
 ERIC S. O'MALLEY  
 Assistant U.S. Attorney  
 DISTRICT OF THE  
 NORTHERN MARIANA ISLANDS  
 Horiguchi Building, Third Floor  
 P.O. Box 500377  
 Saipan, MP 96950  
 Telephone: (670) 236-2980  
 Fax: (670) 236-2985

**IN THE UNITED STATES DISTRICT COURT  
 NORTHERN MARIANA ISLANDS**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 SAMUEL RAYBURN, )  
 )  
 Defendant. )

Criminal Case No.: 07-00019

**GOVERNMENT'S RESPONSE  
 TO DEFENDANT'S MOTION  
 IN LIMINE**

Defendant challenges the admissibility of a May 25, 2006 recorded meeting involving the defendant, his spouse and a cooperating source based on poor quality and audibility. Their recorded conversations reflect discussions of ongoing and future drug trafficking which are relevant and should be admissible at trial.

The original recording, one Sony mini disc, was copied on to an audio cassette tape and both were made available in discovery. The government intends to introduce certain portions of the recording and a redacted transcript of those recorded portions. The entire recording and a transcript of the audible and inaudible portions will nonetheless be available. The government asserts that the quality of the recorded portions it intends to introduce is sufficiently audible so as to not render them inaccurate and unreliable, as well the redacted transcripts are accurate and reliable.

1 The admission of recordings and transcripts are within the sound discretion of the trial  
2 court. United States v. Lane, 514 F.2d 22, 27 (9<sup>th</sup> Cir. 1975); United States v. Taghipour, 964  
3 F.2d 908, 910 (9<sup>th</sup> cir. 1992). The rule in the Ninth Circuit is that a recorded conversation "is  
4 generally admissible unless the unintelligible portions are so substantial that the recording as a  
5 whole is untrustworthy." United States v. Tisor, 96 F.3d 370, 376 (9<sup>th</sup> Cir. 1996).

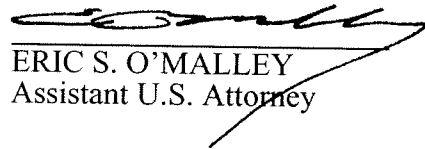
6 The fact that some portions of a recording are not picked up by the recording equipment  
7 should not render the audible portions of the recording inadmissible. In United States v. Tisor,  
8 96 F.3d 370, 376-77 (9<sup>th</sup> Cir. 1996), for example, audio tapes were admissible even if portions  
9 were inaudible because defense counsel was provided the transcripts prior to trial, given ample  
10 time to identify any alleged inaccuracies, and able to cross examine a government witness  
11 regarding the transcripts. As well, in United States v. Hearst, 412 F.Supp. 888-89 (N.D. Cal.  
12 1976), a partially inaudible tape was admitted because defense counsel had the opportunity to  
13 question the defendant about the tape and offer other relevant evidence.

14 The Ninth Circuit has also approved the use of transcripts of recordings during trial and  
15 deliberations. See United States v. Turner, 528 F.2d 143, 167-68 (9<sup>th</sup> Cir. 1975);  
16 Taghipour, 964 F.2d at 910; United States v. Booker, 952 F.2d 247, 249-50 (9<sup>th</sup> Cir. 1991).

17 In this case, the defendant was aware of the May 25, 2006 recording and transcript  
18 sufficiently in advance of trial to allow him to prepare his own transcript. The district court  
19 should instruct the jury that the recordings would be the evidence, the transcripts would be used  
20 as aids in their understanding of the recordings, and to resolve any discrepancy between the  
21 recordings and transcripts in favor of the recordings.

22 Dated this 10 day of September 2007.

23 Respectfully Submitted,  
24 LEONARDO M. RAPADAS  
United States Attorney

25  
26   
27 ERIC S. O'MALLEY  
28 Assistant U.S. Attorney